



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,691	12/26/2000	Mitchell R. Swartz		4269

7590 01/22/2004

Mitchell R. Swartz, ScD, MD, EE  
16 Pembroke Road  
Weston, MA 02493

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 01/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 3641

The reply filed on 12/2/03 is still not responsive to the 8/29/03 Office Action because the deficiencies cited in said Office Action regarding the 7/3/03 Appeal Brief have not been properly or totally corrected. The 12/2/03 reply is in response to the 11/18/03 Notice of Non-Responsive Amendment but said reply did not include a revision of the Appeal Brief to correct the deficiencies reiterated in said Notice.

As to the Applicant's arguments in the 12/2/03 reply, they have been fully considered but found unconvincing. Examples of items in the 11/18/03 Notice that the Applicant disputes but have no merits are given below.

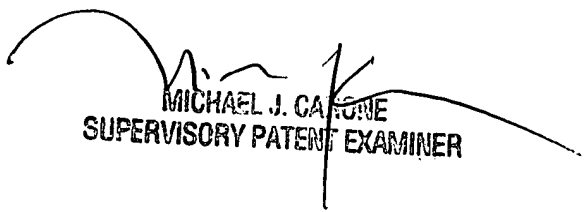
1. As to the summary still containing subject matter not found in the specification, see for example, page 4, 2<sup>nd</sup> paragraph and page 7, last three paragraphs of the 9/23/03 Amendment of the Appeal Brief (Amended Appeal Brief).
2. As to recitation of issues still improper, see for example the last paragraph on page 9 of the Amended Appeal Brief.
3. As to "operability" being a 35 U.S.C. 101 rather than a 35 U.S.C. 112, first and second paragraph issue, there has not been any change on the Office interpretation of this matter, contrary to the allegation of the Applicant.
4. Items 3 and 4 of the 11/18/03 Notice regarding incompleteness of the Arguments section have not been properly addressed and corrected.

Since the above deficiencies have been listed in the 8/29/03 Office Action and in the 11/18/03 Notice of Non-Responsive Amendment, Applicant's failure to correct them is not considered inadvertent.

Art Unit: 3641

Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action (i.e., 8/29/03 Office Action). A fully responsive reply must be timely filed to avoid abandonment of this application.



MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER